1955

Cedar City Corporation v. Public Service Commission of Utah : Brief of Respondent

Utah Supreme Court

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In the
Supreme Court of the State of Utah

CEDAR CITY CORPORATION,
Petitioner,

vs.

PUBLIC SERVICE COMMISSION OF UTAH,
Respondent.

Case No. 8401

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Preliminary Statement

In this brief, the petitioner, Cedar City, will be referred to as the "City", the respondent, Public Service Commission of Utah as the "Commission", and Southern Utah Power Company as the "Company". Emphasis has been supplied.

Statement of Facts

The Commission, by its further Report and Order dated May 27, 1955, in its Case No. 4016, found that certain rates and charges proposed by the Company and designed to produce an authorized additional gross annual revenue of

$69,648, did not make an equitable or reasonable distribution of such authorized increase, and further found that such increase should be distributed among certain classes of service of the Company, including an increase allocated to residential service of $18,410 (R. Vol. I, 149-161). The issue here is simply whether the Order of the Commission distributing such portion of said increase to residential service is lawful.

At the outset it may be observed that the petitioner, Cedar City, is not a residential customer of the Company. No residential customer is here complaining of said Order of the Commission or of the apportionment of a part of said increase to such class of service. The objection might very well be made that the City is not a party aggrieved by the Order of the Commission apportioning a part of said increase to such class of service. However, we do not raise the question of the right of Cedar City to object to the Commission's order but prefer to meet the issue involved in this case upon its merits.

The statement of the City does not properly apprise the Court of the essential facts involved, nor direct attention to the real issue presented. For this reason, we deem it essential that a statement be made by respondent.

The record here is voluminous. Fortunately, however, no question of fact is presented and the issue involved is so narrow that we believe the Court may be saved the burden of a detailed examination of the entire record.

The Company operates two power systems in Southern Utah. One system serves Kanab and surrounding territory.

This is known as the Kanab System. It is physically separated from the remainder of the Company's operations and is not involved in this case. The other system of the Company serves territory in Iron and Washington Counties. This is known as the Cedar System. It is this system which is involved here.

In December, 1953, the City filed with the Commission a petition for a rate hearing in Case No. 3905. In that case, the City sought to compel the Commission to establish a differential power rate for the area included within the corporate limits of Cedar City, upon the theory that the cost of furnishing power within the City was less than that for furnishing power outside the limits of the City. This proceeding came on for hearing on June 8, 1954. In the hearing, appearance was made for the City, the Company, and other interested parties. Testimony was offered and a Report and Order issued by the Commission in which the Commission held and determined that the petition of the City for rate differentials in favor of customers of the Company residing in Cedar City should be denied (R. Vol. II, 189-221). In connection with the proceeding in Case No. 3995, the Commission stated that:

> "The only issue in the present case is the petitioner's request for a differential in rates in favor of Cedar City customers. The question of whether or not the rates applicable to the entire Cedar system require adjustments among the several classes must be determined in another proceeding."

The Order in Case No. 3995 is final and conclusive. No objection is made to that Order here, and the case is material only as background to the Order under attack.

On April 11, 1954, the Company filed with the Commission its complaint in Case No. 4016, asserting that its rates, for its classes of service in the Cedar System failed to provide a fair return and prayed that the Commission fix a fair rate on its properties within its Cedar System and the dollar amount of earnings which would produce a fair rate of return and that upon such determination being made, the Company be ordered to file a schedule of charges and reasonable rates to produce the earnings allowed by the Commission (R. Vol. I, 1-4). Hearing on said petition came on regularly on June 8, 1954, and by agreement of the interested parties, Cases Nos. 3995 and 4016 were heard on a consolidated record. The Commission, on September 8, 1954, issued its Order in Case No. 4016, denying initial relief to the Company (R. Vol. I, 74-83).

The Company filed application for reopening of Case No. 4016 and for further hearing (R. Vol. I, 83-90). The Commission, on October 25, 1954, issued its Order reopening Case No. 4016 (R. Vol. I, 90).

Case No. 4016 came on for further hearing at Cedar City on the 30th of November, 1954. At the hearing the City appeared through its counsel and parties appeared on behalf of Escalante Valley Electric Association, Cedar Valley Pumpers Association, Parowan Valley Pumpers Association, Parowan City, and the Commission's staff (R. Vol. I, 107). In connection with this further hearing the question was raised as to whether proposed rates would be the subject of inquiry at that hearing. Upon the agreement of the parties it was stipulated that the scope of the hearing would extend only to a determination of the dollar requirements

of the Company and would not include the issue of how such dollar requirements would be spread among the various classes of service (R. Vol. V, 868-876).

The Commission, by its Order of January 5, 1955, adjudged and determined that the Company was entitled to increase its rates for electric service in the Cedar System to a level which would produce additional annual gross revenue of not more than $69,648, when applied to the volume of sales during the twelve months ended September 30, 1954, and further concluded that:

> "The question of the distribution of this increase by rate schedules should be reserved for further hearing."

The Commission further ordered that the Company file a revised schedule of rates designed to produce said sum of $69,648, and provided that (R. Vol. I, 115):

> "Upon the filing of said revised rate schedules that this matter be set down for further hearing for the purpose of determining a reasonable and appropriate schedule of rates in conformity with the provisions of this order."

The said Order was served upon counsel for the City on January 5, 1955 (R. Vol. I, 116). The Company filed its proposed rates.

The order of January 5, 1955, authorizing the Company to increase its level of rates to produce additional annual gross revenue of $69,648 would provide it with a rate of return of only 5.11% on its Cedar System (R. Vol. I, 114). No objection is made here to the Order authorizing this additional revenue. The only question is how such additional revenue should be spread among the classes of

service, and the specific complaint of the City is that no part of such increase should be borne by residential customers.

The matter of determining an appropriate rate schedule to produce the increase of $69,648, pursuant to notice, came on for hearing before the Commission at Cedar City on the 10th day of March, 1955. Counsel for the City and other interested parties appeared. The Order of January 5, 1955, quoted above clearly defined the scope of the hearing of March 10, 1955. If there were any doubt of the extent of the inquiry, however, it was removed at the inception of the hearing by the statement of Commissioner Hacking in response to a question by Dr. Adams. Commissioner Hacking made the following statement (R. Vol. VI, 1000-1001):

> "COM. HACKING: Well, I think that the whole matter of the distribution of the revenue requirements to its customers is open in this case, and I think it is—our experience on the commission has demonstrated at least, that at the time of making any general change in the rates of a utility it is usual, rather usual to take a new look at the relationship of customers one to the other, and that is true I think, because in the serving of a given area, the service situations change from time to time.
>
> "You will recall, Dr. Adams, that when the Commisson made a very substantial reduction in the rates of the Utah Power & Light the reduction wasn't on a flat percentage basis to all customers alike. Percentagewise certain classes were given a much greater reduction than others, because the Commission used that as a time for readjusting again under—there hadn't been any adjustment as

between classes for a long time—there was a bad need, as was demonstrated in that case, for a readjustment of rates as between classes of customers, and I think it is quite usual—it has been my experience that when a change in the rates of a utility is being made, whether it is an increase in the rates or a decrease in the rates, that is a good time to review again—the thing should be under constant review, but you can't be changing things all the time—that is an opportune time, I think, to review the relationship of the rates of different classes of customers within the utility, and it is quite usual to do that, I think.

"I think the situation where a flat percentage increase or decrease is given to all of the customers of the Company would be unique rather than the rule. Wouldn't that be the situation?

"COM. HANSON: Yes."

Counsel for the City was present in the hearing room and heard the above statement of the Commissioner. Having received a copy of the Order of January 5, 1955, and having heard such statement, there should have been no doubt that the purpose of the hearing of March 10, 1955, was not simply to approve or disapprove the rate schedule proposed by the Company, but to determine a just and reasonable rate schedule to produce the authorized increase of $69,648.

At the hearing of March 10, 1955, objections to the proposed rates were made by Escalante Valley Electric Association, Cedar Valley Pumpers Association, Parowan Valley Pumpers Association and Parowan City. These protestants thought the rates too high (R. Vol. I, 159).

Briefs were filed by the interested parties on the spread of the rates and the Commission finally, on the 27th of May, 1955, issued the Order here complained of.

We believe it will assist the Court to set forth the increases proposed by the Company on each class of service with the percentages of increase which would result from the proposal, and the increases which the Commission concluded were just and reasonable:

Company Proposal

Class of Service	*Amount of Increase*	*% Increase*
Residential Service	None	None
Irrigation Pumping	$25,607.00	17.75
Industrial Power	22,584.00	13.51
Commercial Service	None	None
Street Lighting	240.00	2.16
Public Authorities	None	None
Escalante R. E. A.	14,507.00	23.49
Parowan City	6,710.00	49.89
Total	$69,648.00	

Commission Order

Class of Service	*Amount of Increase*
Residential Service	$18,410.00
Irrigation Pumping	20,214.00
Industrial Power	22,584.00
Commercial Service	None
Street Lighting	240.00
Public Authorities	None
Escalante R. E. A.	6,200.00
Parowan City	2,000.00
Total	$69,648.00

It will be seen that the Commission made no change in the rates proposed by the Company for industrial power, commercial service and street lighting. The increase for residential service was only 5% (R. Vol I, 159), which, apart from the nominal increase for street lighting, was the smallest percentage increase in any of the services affected.

No one can even briefly review the voluminous record in this case without perceiving that the entire problem of the rates of the Southern Utah Power Company in its Cedar System was most carefully and earnestly considered by the Commission.

STATEMENT OF POINTS RELIED ON

I.

THE COMMISSION REGULARLY PURSUED ITS AUTHORITY.

(a) The Statute Expressly Authorizes the Commission to Establish Rates in Lieu of Those Proposed by a Public Utility.

(b) The Order of the Commission Was Within the Clearly Expressed Scope of Its Inquiry.

II.

THE ORDER OF THE COMMISSION IS SUPPORTED BY APPROPRIATE EVIDENCE AND FINDINGS.

ARGUMENT

The issue presented here, as we see it, is simply this: Whether the Commission was authorized, in the scope of the proceedings before it and under the jurisdiction conferred upon it by law, to disapprove in part the rates proposed by the Company and in lieu thereof to prescribe rates which it found to be just and reasonable. The City, as we understand its position, contends that because the rates which the Company proposed did not suggest an increase on residential service, the Commission was without power to effect such an increase. We believe it abundantly clear both from the record in this proceeding and from the law under which the Commission acted, that it not only had the right but the duty to prescribe fair and reasonable rates for all classes of service, although the Company had not, under its schedules, proposed to increase the rates on certain classes of service. Under the points stated above, we will direct our attention to this issue.

I.

THE COMMISSION REGULARLY PURSUED ITS AUTHORITY.

(a) The Statute Expressly Authorizes the Commission to Establish Rates in Lieu of Those Proposed by a Public Utility.

In the case at bar, the Company proposed certain rates designed to produce an authorized increase of revenue. The Commission entered upon an investigation to determine a reasonable and appropriate schedule of rates to produce

the authorized increase. The Commission on hearing authorized the proposed rates in part, and in part established other rates in lieu of those proposed. Such a procedure is expressly authorized by statute. Subsection (2) of Section 54-7-12, U. C. A. 1953, provides that:

> "(2) Whenever there shall be filed with the Commission any schedule stating a single or joint rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation increasing or resulting in an increase in any rate, fare, toll, rental or charge, the commission may either upon complaint, or upon its own initiative without complaint, at once and, if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation and, pending the hearing and the decision thereon such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not go into effect; provided, that the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not extend more than 120 days beyond the time when such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation would otherwise go into effect, unless the commission in its discretion extends the period of suspension for a further period, not exceeding six months. *On such hearing the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part or others in lieu thereof, which it shall find to be just and reasonable.* * * *"

(b) The Order of the Commission Was Within the Clearly Expressed Scope of Its Inquiry.

The Commission, by its Order of January 5, 1955, determined that the Company was entitled to increase its rates to provide for additional gross annual revenue of $69,648. That Order is now final and conclusive. The Commission expressly left open for determination the matter of a reasonable and appropriate schedule of rates to produce the authorized increase.

The Company was required to file with the Commission its proposal of rates, which it filed. There is nothing in the record, however, which indicates in the least that the Commission or any interested party would be bound by the proposal of the Company. The scope of the inquiry as defined by the Commission was

> "* * * for the purpose of determining a reasonable and appropriate schedule of rates in conformity with the provisions of this order."

The provisions of the Order are that

> "Southern Utah Power Company be and it is hereby authorized to increase its rates for electric service in the Cedar System to a level which will produce additional annual gross revenue of not more than $69,648, when applied to the volume of sales during the twelve months ended September 30, 1954."

If there were any doubt about the scope of the inquiry it is dispelled by the statement of Commissioner Hacking at the opening of the hearing of March 10, 1955, herein set forth.

It is thus seen that the Commission proceeded under express statutory authorization and strictly in accordance

with the scope of its inquiry as defined in its own Order and as expressed by its Commissioner in the conduct of the hearing.

Counsel for the City assert that the increase in residential rates was put into effect without a hearing.

We believe counsel overlook two essential propositions. (1) The Company was authorized by the Order of January 5, 1955, to increase its rates to produce additional annual gross revenue of $69,648. That authorization is nowhere drawn into question. (2) The further hearing in the proceeding dealt only with what is often in rate cases designated as the "spread of the increase". In other words, the further inquiry did not deal only with a particular rate which might be proposed by the Company for a particular class of service. The inquiry had a much broader scope—it was for the purpose, as the Commission's Order expressly stated, of "determining a reasonable and appropriate schedule of rates in conformity with the provisions of this order". Thus, every rate was under inquiry and every rate was subject to modification. All of the evidence went to the propriety of individual rates and also to the relationship of each rate to the entire schedule.

Only a moment's reflection is necessary to demonstrate the wisdom of the statute and the proceeding adopted by the Commission. Suppose in the instant case that the Company had proposed to increase the irrigation pumping rate $10,000.00. Counsel for such users might have appeared at the hearing and made no objection to this increase. The Commission, on a complete review of all the evidence, might have concluded, however, that a just and reasonable sched-

ule required this class of service to be increased to $10,500.00, and prescribed such a rate. Could users of this class of service then assert, as does the City, that such rate was put into effect without a hearing and without evidence. If this were the case the fixing of rate schedules after allowed increases would be a hopeless procedure of trial and error and such schedules could only be approved if no class of service were increased by the Commission above rates proposed by the utility.

The obvious and correct answer is that in an inquiry such as involved here, every rate is under investigation, with power and jurisdiction in the Commission to adjust any and all rates in order to prescribe a just and reasonable schedule.

II.

THE ORDER OF THE COMMISSION IS SUPPORTED BY APPROPRIATE EVIDENCE AND FINDINGS.

The City in its first point contends that rate increases must be based upon a hearing and evidence. With that proposition we readily agree. The Statute (Section 54-7-12, U. C. A. 1953) so provides and the cases so hold.

At the outset the City seems to overlook the fact, however, that the Order of the Commission of January 5, 1955, authorizes the Company to increase its rates in the Cedar System to a level which will produce additional annual gross revenue of not more than $69,648. This order is now final and no person has made or is making any objection thereto.

The phase of this proceeding which deals with the authority of the Company to increase its rates and the level to which such rates may be increased has now been concluded. We are concerned here only with the apportionment of the authorized increase among the various classes of service which the Company renders.

In the determination of the general level of rates which a utility may impose, courts and commissions are guided by well defined principles dealing with the determination and valuation of property which may be included in the rate base, and the rate of return which a utility may fairly earn upon the base thus established.

Our problem here is not now one of *authority to increase rates,* it is one of *classification* of rates within the limits of an authorized increase. In the matter of the classification of rates between the various kinds of customers we have only the most general principles to guide us. In general, rate differentials between various users must be based upon reasonable classifications.

Insofar as this question is controlled by statute, it is governed by Section 54-3-8, Utah Code Annotated, 1953, which provides that:

> "Preferences forbidden—Power of commission. No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service or facilities, or in any other respect, either as between localities or as between classes of service.

> The commission shall have power to determine any question of fact arising under this section."

The controlling principles which govern the question of classification of rates and charges of a public utility and the matter of rate differentials between various classes of service have often been considered and announced by text writers. These principles in general terms are now well established. One citation will be sufficient to set forth the rule.

See: 43 Am. Jur., Public Utilities and Services, Section 178, where the rule is stated as follows:

> "Any fact which produces a substantial inequality of condition or change of circumstances justifies a reasonably commensurate inequality of rates. A discrimination as to rates is not unlawful where based upon a reasonable classification corresponding to actual differences in the situation of the consumers or the furnishing of the service; and a public utility or a municipal corporation operating a public service plant may make a reasonable classification as to rates for public service. * * *"
>
> "In accordance with the foregoing principles, valid reasons may exist for different rates for current furnished for lighting purposes from that for power purposes. A substantial difference constituting a reasonable basis for classification may be found in the time of the use of the service or the manner of service. A reduced rate, it has been held, may be given those signing yearly contracts. A reasonable diversity in rates, based on a substantial difference in equipment for consumption of natural gas as a fuel for heating hotels, is not unreasonably discriminatory, where the same rate and service is offered alike to all consumers similarly situated

> and provided with the same character of equipment. It has also been held that where a company entered into experimental contracts with a view of reaching a basis for future charges, such action, even though it resulted in giving for a limited term a better rate to a few customers than was given to others receiving substantially the same amount of current, was not discriminatory. However, the reasonableness of the basis of the classification must appear; and whether a discrimination is unlawful and unjust or the circumstances substantially dissimilar is usually a question of fact. A classification of rates may not be made according to the value of the service to the consumer. Nor will a classification by a municipal corporation of rates for public service furnished by it, based upon a particular business or use for a special purpose, justify discriminatory rates unless there is a substantial difference between such business or purpose and others as to which different rates apply. * * *"

A leading case on the subject is that of *Elk Hotel Co.* v. *United Fuel Gas Co.*, 83 S. E. 922 (West Virginia), where the rule is stated in the headnote as follows:

> "As a public service corporation, a gas company may lawfully classify its patrons and charge different rates for each character of service, provided the classification is not unjust, and the rate does not give an undue or unreasonable preference or advantage to, or make an unfair discrimination among, its patrons and consumers under the same or substantially similar circumstances and conditions.
>
> "An undue or unreasonable advantange or preference by a public service corporation results only from allowing to one person what it denied to another under substantially the same circumstances and conditions. And any fact which produces a

> substantial inequality of condition or change of circumstances justifies a reasonably commensurate inequality of charges."

Guided by these general principles, the Commission undertook in its hearing of March 10, 1955, to determine a reasonable and appropriate schedule of rates to produce the authorized increase of $69,648.

Expert witnesses testified on behalf of the Company, Escalante R. E. A., the irrigation users and Parowan City.

Mr. Charles A. Ashby, Jr. was the rate witness for the Company. He testified that in developing the rate schedule proposed by the Company he employed such factors as the territory served, the density of population, the voltage at which service is rendered, the use of service throughout the year, the class of service, the historical pattern of the rate schedules, and the costs of rendering service as he could best determine them (R. Vol. I, 151).

Mr. C. M. Stanley, a consulting engineer, testified on behalf of Escalante R. E. A. He expressed the opinion that rate making is an art, not a science, and that a wide element of judgment is necessary. He suggested five factors that should receive consideration, namely, cost of service, the promotional aspects of a rate, ability to pay, the historical pattern, and reasonable relationships between classes of customers (R. Vol. I, 153).

Dr. Thomas C. Adams, a consulting engineer, testified on behalf of Parowan City and irrigation users (R. Vol. I, 154-155).

Mr. Ashby under his approach undertook to justify the schedule proposed by the Company. Mr. Stanley and Dr. Adams took vigorous exception to the views of Mr. Ashby and both thought the proposed rates for Escalante R. E. A., Parowan City and irrigation users unreasonably high (R. Vol. I, 153-156).

A host of exhibits were prepared and introduced in evidence by the Company, Mr. Stanley and Dr. Adams (R. Vol. III, Exhibits 1 to 37, R. Vol. III-A, Exhibits 1-A to 20-A, R. Vol. III-B, Exhibits 1-B to 20-B). In addition to these exhibits, Mr. Robinson of the Commission's staff, made an independent study of the rate structure of the Company's Cedar System, and prepared and introduced in evidence Exhibit 21-B, which reflects a comparison of the various Company rates, which, as to residential users, extends back to 1935 (R. Vol. III-B, 347). An examination of these exhibits will demonstrate that an exhaustive study was made and presented to the Commission not only of residential rates, but of every class of service rendered by the Company within its Cedar System.

In addition to the expert witnesses, testimony was received by the Commission regarding the propriety of the proposed rates from Mr. Thomas, Manager of the Company, and from numerous farmers and ranchers in the area.

It may very well be that the City failed to recognize the statutory authority of the Commission in cases of this character, or that it did not perceive the scope of the inquiry undertaken by the Commission in the hearing of March 10, 1955. Whatever may be the fact, the assertion of the City that the residential rate was put into effect

without evidence is wholly without merit. The Commission had before it the entire mass of evidence, oral and documentary, referred to herein, and shown in detail in the record. All of this evidence bears upon the fixing of rates for each class of service and the relationship of one rate to another in the entire schedule. The City should have been fully aware that if the proposed rate on any class of service was too high, the error in the rate proposed could only be corrected by lowering the rate which was too high and by increasing some other rate to adjust the difference in revenues; all of which the Commission was clearly authorized to do under the said statutes, and in the application of the above stated principles dealing with rate differentials.

The Company presented its proposed rates in good faith. Its witnesses testified in support of that schedule. The record, however, is replete with other evidence, oral and documentary, to the effect that the rates proposed by the Company were unreasonably high in relation to other classes of service. The Commission, upon a consideration of all the evidence found that the schedule proposed by the Company did not make an equitable or reasonable distribution of the allowed increase. How can anyone now seriously contend that the Order of the Commission disallowing the rates of the Company is not based upon adequate evidence.

Having determined that the schedule proposed by the Company was not just and reasonable, what was the next duty of the Commission. Would the City contend that the Company should have been ordered to propose another

schedule, which, on another hearing, might be disallowed, and so by trial and error the Company would continue to file schedules until it should finally come up with an acceptable schedule?

This very impasse is what the statute overcame by providing that the Commission should be empowered to fix rates in lieu of those proposed. This is precisely what the Commission did.

The statute requires that if the Commission disapprove rates proposed, it shall establish others in lieu thereof which shall be "just and reasonable". The Commission fixed the schedule set forth in its order and shown herein, and found that the same was just and reasonable. The Commission allocated $18,410.00 to residential service and in this connection found as follows:

> "The amount shown above for residential service represents five per cent of the revenues from that class of service during the 12 months ended September 30, 1954. This is a modest increase which we think is justified in view of the rate history of the company. The amount allocated to residential use has been utilized to reduce the amounts which the company proposed for irrigation, Escalante, and Parowan City. We find that the present rates applicable to commercial service, small industrial uses, and sales to public authorities (other than street lighting) are at a sufficiently high level."

The rate history of the Company referred to in the previous paragraph is reflected in the exhibits herein referred to and particularly in the said Exhibit 21-B, which shows the development of the residential rate extending back over nineteen years.

In connection with the establishment of the rate schedules found by the Commission to be just and reasonable it must be recognized that rate making is not an exact science, the witness Stanley termed it an art. Whatever rate making may properly be called, every one who has studied the subject readily agrees that it requires experience and judgment; that it is not capable of exact measurement and must in the final analysis be controlled by the general principles cited above. It is for these reasons that the legislature has charged the Commission with the duty of fixing rate schedules and providing that their determinations in so doing shall be conclusive.

In the seven volumes of record before the Court, we submit there is ample proof of a complete hearing, abundant competent evidence, and adequate findings to support the Order complained of. Through these proceedings, the problem of the rate schedule of the Company in its Cedar System was finally concluded. The City does not suggest what purpose could have been served by further hearing, evidence or findings. We can perceive nothing which might have been thereby accomplished.

Section 54-7-16, U. C. A. 1953, in defining the scope of the review in cases of this character provides in part that:

> "* * * The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the state of Utah. The findings and conclusions of

> the commission on questions of fact shall be final and shall not be subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. * * *"

Numerous cases have construed this section. There is no need here to enlarge this brief with an extended review of these authorities. *Salt Lake City, et al.* v. *Utah Light and Traction Company,* 52 Utah 210, 173 Pac. 556, one of the early cases, dealt with the rate making power of the Commission. We believe it to be controlling here. In speaking of this power, the Court at page 226 of the Utah report said:

> "From what we have said we do not wish to be understood as either affirming the rate fixed by the commission or disapproving it. For the reasons hereinafter stated it will appear that we do not possess the power to review the commission's findings in respect of whether a certain rate is reasonable or otherwise."

In that case the sufficiency of the findings of the Commission were drawn into question. In answering that contention the Court at the same page observed that

> "The plaintiffs, however, also contend that the evidence is insufficient to sustain the findings and order of the commission by which the rates were found to be inadequate and were increased, and, further, that the findings are in and of themselves insufficient. Referring to the last objection first, we are of the opinion that, in view of the elaborate opinion of the commission, which was filed with the findings, the findings are sufficient. While it is true that the Utilities Act expressly requires the commission to make findings, and while it is also true

> that the commission should be careful to make proper findings respecting the material ultimate facts upon which an order is based, yet we cannot see wherein the plaintiffs, or any one else could have been, or can be, benefited if the findings had been far more specific. When the findings and the opinion filed by the commission are considered together, as in this case we think they should be, we are of the opinion that the objection that the findings are insufficient is not tenable, and hence that objection must fail."

In view of the carefully prepared decision of the Commission and the fact that no suggestion is made here that any further findings would serve a useful purpose, we believe the stated principle is particularly applicable on this review.

We have not overlooked the cases cited by the City. A consideration of these cases convinces us that they are not material here.

CONCLUSION

The Commission regularly pursued its authority. Its Order is based upon appropriate evidence and findings, and should be affirmed.

Respectfully submitted,

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